

**SERIAL 05189 RFP ELECTRONIC DATA BASE PRODUCTS AND SERVICES  
(MARICOPA COUNTY LIBRARY DISTRICT BRANCHES ONLY)  
Tutor.com Contract**

**DATE OF LAST REVISION: September 04, 2008**

**CONTRACT END DATE: May 31, 2016**

**CONTRACT PERIOD THROUGH MAY 31, 2016**

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ELECTRONIC DATA BASE PRODUCTS AND SERVICES  
(MARICOPA COUNTY LIBRARY DISTRICT BRANCHES ONLY)**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **May 17, 2006 (Eff. 07/01/07)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

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Wes Baysinger, Director  
Materials Management

DL/mm  
Attach

Copy to: Materials Management Clerk of the Board  
Cindy Kolaczynski, Library District



## CONTRACT PURSUANT TO RFP

This Contract is entered into this 4<sup>th</sup> day of September, 2008 by and between Maricopa County Library District ("District"), a political subdivision of the State of Arizona, and Tutor.com ("Contractor") for the purchase of Electronic Data Base Products and Services.

### 1.0 TERM:

- 1.1 The term of this Contract shall remain in full force and effect through the 31<sup>st</sup> day of May, 2016, so long as Contractor continues to offer the products with substantially the same format and content.
- 1.2 The District may, at its option and with the agreement of the Contractor, extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

### 2.0 PAYMENT:

- 2.1 As consideration for performance of the duties described herein, District shall pay Contractor the sum(s) stated in Exhibit "A."
- 2.2 Payment shall be made after the District's receipt of a properly completed invoice. Invoices shall follow the billing instructions contained in the account set-up. The District will establish the account set-up in concert with the Contractor.

### 3.0 DUTIES:

The Contractor shall perform all duties stated in Exhibit "B."

### 4.0 TERMS & CONDITIONS:

#### 4.1 INDEMNIFICATION:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless District, its agents, representatives, officers, directors, officials, and employees from and against all third-party claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless District, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, omissions or mistakes in the performance of this Contract including any person for whose acts, errors, omissions or mistakes Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of District.

**4.2 WARRANTY AND INDEMNIFICATION – COPYRIGHT:**

Contractor warrants and represents that it has the full right, power and authority to enter into this Contract and to grant the rights granted herein; that it has not previously exclusively licensed the interactive multimedia rights to the Material to any third party; and that District's inclusion and use of the Material as permitted in the Contract and Contractor's Licensing/Use Agreement (as negotiated) will not violate any rights of any kind or nature whatsoever of any third party. Contractor shall indemnify and hold harmless District, its successors, assigns and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fee), arising out of or in any way connected with any breach of any representation or warranty made by Contractor herein.

**4.3 WARRANTY AND INDEMNIFICATION – USE OF INTERNET:**

Contractor shall indemnify and hold District harmless from and against any third-party claims, liabilities, damages and expenses, including, without limitation, reasonable attorney's fees relating to or arising out of Contractor's breach of any of its material obligations under this Contract. Contractor shall not be liable for any third party claims based upon or arising from District's negligent operation of the System or for any indirect, incidental or consequential damages arising from the use of or inability to use the System attributable to District's negligence, provided that Contractor is not also negligent.

**4.4 PROCUREMENT CARD ORDERING CAPABILITY:**

It is the intent of District to pay via purchase order or through use of a MasterCard Procurement Card as best meets the needs of the Library District.

**4.5 NOTICES:**

All notices given pursuant to the terms of this Contract shall be addressed to:

For District:

Maricopa County  
Materials Management Department  
Attn: Director of Purchasing  
320 West Lincoln Street  
Phoenix, Arizona 85003

For Contractor:

Tutor.com  
Attn: Kristen Becker  
40 Fulton Street, 4<sup>th</sup> Floor  
New York, New York 10038  
Telephone: 646.619.8200  
Facsimile: 646.619.8273  
Email: kbecker@tutor.com

**4.6 REQUIREMENTS CONTRACT:**

4.6.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when District identifies a need and issues a purchase order or a written notice to proceed.

4.6.2 District reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be

canceled, the District agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The District will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.

- 4.6.3 Contractor agrees to accept oral cancellation of purchase orders. Contractor shall reserve the right to confirm any such cancellation with written acknowledgement back to District.

4.7 **PRICE ADJUSTMENTS:**

Requests for reasonable price adjustments, if any, must be submitted sixty (60) days prior to the Contract anniversary date, beginning after Year Two of the Contract. Requests for adjustment in cost of service-related labor, copyright, licensing and/or materials must be supported by appropriate documentation. If District agrees to the adjusted price terms, District shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Consumer Price Index or by performing a market survey.

4.8 **TERMINATION FOR CONVENIENCE:**

The District reserves the right to terminate the Contract in whole or in part at any time, when in the best interests of the District without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the District. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

4.9 **TERMINATION FOR DEFAULT:**

- 4.9.1 In addition to the rights reserved in the Contract, the District may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

- 4.9.2 Upon termination, the Contractor shall refund, to District, any fees paid Contractor up to the point of termination.

- 4.9.3 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

4.10 **STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:**

Notice is given that pursuant to A.R.S. §38-511 the District may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the District may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District from any other party to the contract arising as the result of the Contract.

**4.11 OFFSET FOR DAMAGES:**

In addition to all other remedies at law or equity, the District may offset from any money due to the Contractor any amounts Contractor owes to the District for damages resulting from breach or deficiencies in performance under this contract.

**4.12 ADDITIONS/DELETIONS OF SERVICE:**

The District reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the District.

**4.13 SUBCONTRACTING:**

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the District, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Contract Serial Number and identify the job project.

**4.14 AMENDMENTS:**

All amendments to this Contract must be in writing and signed by both parties.

**4.15 RETENTION OF RECORDS:**

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The District, Federal or State auditors and any other persons duly authorized by the Department shall upon reasonable written notice, have full access to, and the right to examine, copy and make use of, any and all said materials.

**4.16 AUDIT DISALLOWANCES:**

If at any time, District determines that a cost for which payment has been made is a disallowed cost, such as overpayment, District shall notify the Contractor in writing of the disallowance. District shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

**4.17 ALTERNATIVE DISPUTE RESOLUTION:**

4.17.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

4.17.1.1 Render a decision;

4.17.1.2 Notify the parties that the exhibits are available for retrieval; and

4.17.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

4.17.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

4.17.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

**4.18 SEVERABILITY:**

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

**4.19 RIGHTS IN DATA:**

The District shall have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder. Upon expiration or termination of this Contract, District will not retain any rights to the database(s) included in this Contract.

**4.20 INTEGRATION:**

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

**4.21 GOVERNING LAW:**

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona

**4.22 ORDER OF PRECEDENCE:**

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, the terms of this Contract shall prevail.

**4.23 INCORPORATION OF DOCUMENTS:**

The following are to be attached to and made part of this Contract.

4.23.1 Exhibit A, Pricing.

4.23.2 Exhibit B, Scope of Work

4.23.3 Exhibit C, Tutor.com Standard Master Service Agreement.

**IN WITNESS WHEREOF**, this Contract is executed on the date set forth above.

**CONTRACTOR**

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINTED NAME AND TITLE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
DATE

**MARICOPA COUNTY**

\_\_\_\_\_  
DIRECTOR, MATERIALS MANAGEMENT

\_\_\_\_\_  
DATE

**APPROVED AS TO FORM:**

\_\_\_\_\_  
DEPUTY MARICOPA COUNTY ATTORNEY

\_\_\_\_\_  
DATE

## EXHIBIT B PRICING

SERIAL 05189-RFP

PRICING SHEET: NIGP CODE 95635

CONTRACTOR'S NAME:	TUTOR.COM
COUNTY VENDOR NUMBER :	W000006436
ADDRESS:	40 FULTON STSREET, 4TH FLOOR
	NEW YORK, NEW YORK 10038
P.O. ADDRESS:	N/A
TELEPHONE NUMBER:	646.619.8200
FACSIMILE NUMBER:	646.619.8273
WEB SITE:	www.tutor.com
CONTACT (REPRESENTATIVE):	KRISTEN BECKER
REPRESENTATIVE'S E-MAIL ADDRESS:	kbecker@tutor.com

THERE WILL NOT BE ANY M/WBE PARTICIPATION.

CONTRACTOR WILL ACCEPT PROCUREMENT CARD, BUT NO REBATE FOR USE.

CONTRACTOR HAS INTERNET CAPABILITY.

OTHER GOVERNMENT ENTITIES DO NOT HAVE ACCESS TO THIS CONTRACT.

CONTRACTOR'S PROMPT PAYMENT TERMS ARE 1 % 10 DAYS, NET 30 DAYS.

### 1.0 MARICOPA COUNTY ONLY

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON POPULATION</u>		<u>% OFF LIST</u>
	<u>List Price</u>	<u>Annual Cost</u>	
<b>1.1</b> Online Homework Help	\$500,000.00	\$252,000.00	49%
With Optional Virtual Reference	\$680,000.00	\$378,000.00	44%

### 2.0 STATEWIDE (INCLUDING MARICOPA COUNTYT)

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON POPULATION</u>		<u>% OFF LIST</u>
	<u>List Price</u>	<u>Annual Cost</u>	
<b>2.1</b> Online Homework Help	\$863,000.00	\$427,000.00	51%
With Optional Virtual Reference	\$1,171,000.00	\$642,810.00	45%



**3.0 MARICOPA COUNTY LIBRARY DISTRICT BRANCHES ONLY**

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON POPULATION</u>		<u>% OFF LIST</u>
	<u>List Price</u>	<u>Annual Cost</u>	
<b>3.1</b> Online Homework Help	\$100,000.00	\$58,000.00	42%
With Optional Virtual Reference	\$136,000.00	\$83,200.00	38%

**EXHIBIT B**

**SCOPE OF WORK**

1.0 INTENT:

- 1.1 This Contract is for electronic products and services. Products and services provided under this Contract are intended for use by Maricopa County Library District (District) Library Branches. Contractor's products and services shall allow for unlimited, simultaneous access by users of District Library Branches:
- 1.2 New contractors may be added to this Contract for these services during the term of the Contract as appropriate in order to meet the continuing needs of the District.

2.0 SCOPE OF SERVICES:

- 2.1 Contractor shall provide access to electronic solutions via the internet. Access shall be unlimited usage and unlimited viewing, printing and downloading of citations and articles from inside the libraries and, if applicable, via remote customer access. Additional Core Subject Areas may be added to this Contract as funding becomes available.

2.2 TAX:

- 2.2.1 The District is exempt from any out-of-state tax on the purchase of books, electronic information and audio/visual materials. Tax Exempt numbers are not issued by the County. A copy of the Arizona Law providing this exemption will be provided at the time of account set-up if requested by Contractor.
- 2.2.2 An in-state contractor may only charge the city sales tax for the city within which the Contractor is located. The exception to this is where the Arizona city has also exempted these taxes.
- 2.2.3 No tax on labor services:

2.3 SERVICE DELIVERY:

It shall be the Contractor's responsibility to ensure service is satisfactory, continuous and uninterrupted at all times during the Contract term. Failure to meet this requirement may result in the Contract being terminated in accordance with Contract Terms and Conditions.

**TUTOR.COM, 40 FULTON ST 4<sup>TH</sup> FLOOR, NEW YORK, NY 10038**

PRICING SHEET: NIGP 9155102

Terms:	1% 10 Days Net 30
Vendor Number:	W000006436 X
Telephone Number:	646/619-8248
Fax Number:	646/607-1027
Contact Person:	Kristen Becker
E-mail Address:	<a href="mailto:kbecker@tutor.com">kbecker@tutor.com</a>
Company Web Site:	<a href="http://www.tutor.com">www.tutor.com</a>
Contract Period:	To cover the period ending <b>May 31, 2016.</b>